

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DOUGLAS DYNAMICS, LLC, d/b/a/  
WESTERN PRODUCTS,

Plaintiff,

v.

B&P SUPPLY, INC.,

Defendant

CIVIL ACTION

Docket No: 3:04-cv-11467-MAP

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED  
MEMORANDUM OF LAW**

Plaintiff Douglas Dynamics, LLC, d/b/a/ Western Products ("Western") hereby moves, pursuant to Local Rule 7.1(b)(3), for leave to file a reply memorandum in support of Western's pending motion for summary judgment. As grounds therefore, Western states as follows:

1. Western brought this action against B&P to recover the price of the goods that B&P purchased from Western during the period from November 2003 through March 2004. Western also seeks to recover the interest that has accrued on B&P's overdue account under the Terms of Sale that govern the purchases made by B&P. In its amended answer to Western's complaint, Defendant B&P Supply, Inc. ("B&P") asserted a counterclaim alleging claims for breach of contract, wrongful termination, and violations of Sections 1 and 2 of the Sherman Act, as well as chapters 93 and 93A of the Massachusetts General Laws.

2. On July 15, 2005, Western filed a motion for summary judgment in its favor on its claims against B&P and on B&P's counterclaim against Western. In support of its motion, Western submitted a memorandum of law, a statement of undisputed material facts, and the affidavit of Michael Schaut with attached exhibits. On Friday, August 5, 2005, B&P filed an

opposition to Western's motion for summary judgment.<sup>1</sup> B&P supported its opposition with a memorandum of law, a reply to Western's statement of undisputed material facts, and the affidavit of Peter Dus with attached exhibits.

3. Western's counsel has reviewed the papers submitted by B&P in opposition to Western's motion for summary judgment. Based on Western's review, B&P has raised new legal and factual issues that had not been addressed in Western's motion such as what constitutes adequate notice to terminate an unwritten, at will agreement. In addition, B&P has cited cases for incorrect propositions and has taken liberties with the factual record. Moreover, the Affidavit of Peter Dus contains many inadmissible statements that are conclusory, lack foundation, and not based on personal knowledge.

4. Western intends to file a motion to strike with respect to the Dus Affidavit. In addition, given the complexities of the legal issues and factual background of this case, Western respectfully requests leave to file a reply legal memorandum not to exceed 10 pages.

5. Western's counsel believes that granting Western leave to file a reply memorandum in support of its motion for summary judgment will assist the Court in focusing on the legal issues and more efficiently evaluating the parties' factual assertions.

6. Western requests that the Court set the deadline for filing the reply memorandum as 7 days from the entry of the Court's order addressing this motion for leave.

For all of the above reasons, Western respectfully requests that the Court grant Western leave to file a reply legal memorandum not to exceed 10 pages within 7 days from the entry of the Court's order on this motion.

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<sup>1</sup> Local Rule 7.1(b)(2) required B&P to file its opposition to Western's motion for summary judgment within 14 days after service of the motion. Western served its motion for summary judgment on B&P on July 15, 2005, via the ECF system and therefore, B&P's opposition was due by July 29, 2005. Because B&P filed its opposition 21 days after it was served with Western's motion, its opposition is untimely and should be stricken.

Dated: August 5, 2005

/s/ Christopher R. Drury  
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*Attorneys for Plaintiff Douglas Dynamics, LLC  
d/b/a/ Western Products*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2005, I electronically filed **Plaintiff's Motion For Leave To File A Reply Memorandum In Support Of Its Motion For Summary Judgment With Incorporated Memorandum Of Law** with the Clerk of Court using the CM/ECF system which will serve notice on the following:

Jack E. Houghton, Jr.  
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DATED: August 5, 2005

/s/ Christopher R. Drury  
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